

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION**

YETI Coolers, LLC,

Plaintiff,

v.

Viatek Consumer Products Group, Inc.,

Defendant.

Civil Action No. 1:17-cv-00467-RP

Judge Robert L. Pitman

CONSENT JUDGMENT

Plaintiff, YETI Coolers, LLC (“YETI”), filed civil action number 1:17-cv-00467-RP in the Western District of Texas, against defendants, including defendant Viatek Consumer Products Group, Inc. (“Viatek”), asserting claims for (1) trade dress infringement in violation of 15 U.S.C. § 1125(a); (2) trade dress dilution in violation of 15 U.S.C. § 1125(c); (3) unfair competition and false designation of origin in violation of 15 U.S.C. § 1125(a); (4) trade dress dilution in violation of Tex. Bus. & Com. Code § 16.103; (5) common law trade dress infringement; (6) common law unfair competition; (7) common law misappropriation; and (8) unjust enrichment. YETI duly served its Complaint, and Viatek responded to the Complaint on July 26, 2017. Viatek now stipulates and consents to the Court’s entry of this Consent Judgment.

NOW THEREFORE, upon consent of the parties, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED:

1. The Court has subject matter jurisdiction over this action pursuant to at least 15 U.S.C. § 1121(a) and 28 U.S.C. §§ 1331, 1338(a) & (b), and 1367(a).

2. This Court has personal jurisdiction over Viatek and venue is proper in this judicial district at least because, inter alia, Viatek is doing business in the State of Texas, including in this District.

3. Viatek sold, offered to sell, promoted, advertised, imported, and distributed 20 oz. and 30 oz. tumblers that YETI accused of violating YETI's intellectual property rights (collectively the "Accused Products").

4. YETI owns all right, title, and interest in and to the trade dress of the YETI 20 oz. Rambler® tumbler and the YETI 30 oz. Rambler® tumbler, including the overall look and appearance of the YETI 20 oz. and 30 oz. Rambler® tumblers and all common law trademark and trade dress rights in the YETI 20 oz. and 30 oz. Rambler® tumblers. The trade dress of the YETI 20 oz. and 30 oz. Rambler® tumblers hereafter is referred to as the "YETI Trade Dress."

5. Viatek agrees that the YETI Trade Dress is unique, distinctive, non-functional, well known, famous, and has acquired distinctiveness and is associated by consumers with YETI, and that the goodwill associated with the YETI Trade Dress belongs exclusively to YETI.

6. Viatek agrees that the YETI Trade Dress is not essential to the use or purpose of a tumbler, does not affect the cost or quality of a tumbler, is not functional, is not the reason the YETI tumblers work, and, outside of the association with YETI's reputation and goodwill, are not important to the commercial success of tumblers, generally.

7. Viatek agrees that exclusive use of the YETI Trade Dress by YETI will not put competitors at a significant non-reputation-related disadvantage in the marketplace.

8. Viatek agrees that many competitors compete with YETI and that these competitors sell tumblers having alternative designs that do not include elements of the YETI Trade Dress and have a different overall appearance compared to the YETI Trade Dress.

9. Viatek agrees that the YETI Trade Dress is valid and enforceable.

10. Viatek denies any wrongdoing, but in order to avoid the expense and hassle of litigation, Viatek has agreed to cease selling the Accused Products. Viatek respects YETI's intellectual property rights, and the intellectual property rights of all companies, as Viatek also has substantial intellectual property of its own.

11. Viatek shall have a period of time identified in the Settlement Agreement to donate the Accused Products it currently has in inventory ("Inventory Products").

12. Except for the limited donation of the Inventory Products, Viatek shall not at any time manufacture, have manufactured on its behalf, offer to sell, sell, promote, advertise, display, commercially use, import, purchase, or distribute (a) any Accused Products in any color or color combination, (b) products that are confusingly similar to, or products with the same model names or numbers (including the same Amazon Standard Identification Numbers, Stock Keeping Unit numbers, Universal Product Codes, or any other identifying numbers or names) as, the Accused Products or the YETI Trade Dress, or (c) any product that is likely to cause confusion, mistake, or to deceive as to the affiliation, connection, or association of Viatek with YETI, or as to the source, origin, sponsorship, or approval of the product by YETI.

13. Each party shall bear its own costs and attorney fees.

14. This Court shall retain jurisdiction over the parties for the purpose of enforcing the terms of this Consent Judgment.

15. This Consent Judgment represents a final adjudication of all claims, counterclaims, and defenses that were, or could have been, brought between YETI and Viatek in this case. This Consent Judgment is intended to be final and shall bind YETI and Viatek on all issues that were

or could have been litigated in this proceeding, and YETI and Viatek shall not appeal any issue from this proceeding.

SO ORDERED:

Dated: October 24, 2018



Robert L. Pitman
United States District Judge

Consented and Agreed to:

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**ATTORNEYS FOR VIATEK CONSUMER
PRODUCTS GROUP, INC.**


Signed for YETI Coolers, LLC
Name: Bryan Barksdale
Title: General Counsel
Date: 9/6/18

Signed for Viatek Consumer Products
Group, Inc.

Name: _____
Title: _____
Date: _____

Signed for YETI Coolers, LLC

Name: _____

Title: _____

Date: _____



Signed for Viatch Consumer Products Group, Inc.

Name: Lou Lentine

Title: President

Date: October 2, 2018